

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION**

TIMOTHY E. MCKELROY,

PLAINTIFF,

VS.

CIVIL ACTION NO. 2:07CV86-P-A

HARLEY E. WOOD AND

LITTLE FALLS FREIGHT COMPANY, INC.,

DEFENDANTS.

ORDER

This matter comes before the court upon the plaintiff's motion to remand [7-1]. After due consideration of the motion and the responses filed thereto, the court finds as follows, to-wit:

On April 23, 2007 the plaintiff filed the instant vehicular negligence action in the Circuit Court of Panola County, Mississippi. The plaintiff is a resident of Mississippi. The defendants are residents of New York. It is undisputed that there is complete residential diversity between the parties. On May 21, 2007 the defendants removed this action to federal court arguing that the court has federal diversity jurisdiction because there is complete diversity and an amount in controversy in excess of \$75,000.00.

In his motion to remand, the plaintiff argues that the amount in controversy is only \$75,000.00 which is less than 28 U.S.C. § 1332's requirement that the amount in controversy for federal diversity jurisdiction must "exceed[] the sum or value of \$75,000, exclusive of interest and costs." The Complaint states in pertinent part: "[T]he Plaintiff demands judgment against the Defendants, jointly and severally, in the sum of \$75,000.00, for actual and punitive damages plus costs of Court, Attorneys fees, and any other relief deemed appropriate under the circumstances."

The defendants are correct that attorney fees may be included in determining the

jurisdictional amount when they are allowed by contract or state law. *Foret v. Southern Farm Bureau Life Ins. Co.*, 918 F.2d 534, 537 (5th Cir. 1990). Mississippi law allows recovery of attorney fees if punitive damages are proper. *Mauck v. Columbus Hotel Co.*, 741 So.2d 259, 269 (Miss. 1999); *Prime Rx, LLC v. McKendree*, 917 So.2d 791, 798 (Miss. 2005).

Therefore, since the Complaint seeks \$75,000.00, including punitive damages, “plus ... Attorneys fees,” the amount in controversy exceeds \$75,000.00.

IT IS THEREFORE ORDERED AND ADJUDGED that:

- (1) The plaintiff’s motion to remand [7-1] is **DENIED**; and
- (2) The parties are instructed to contact the U.S. Magistrate Judge by June 27, 2007 to lift the stay in this case and proceed with the case management conference and other pretrial procedures.

SO ORDERED this the 13th day of June, A.D., 2007.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE